

AMENDED IN SENATE MAY 17, 2012

AMENDED IN SENATE MAY 1, 2012

**SENATE BILL**

**No. 989**

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**Introduced by Senator Vargas**

February 1, 2012

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An act to amend ~~Section~~ *Sections 1305 and 1305.4* of the Penal Code, relating to bail.

LEGISLATIVE COUNSEL'S DIGEST

SB 989, as amended, Vargas. Bail: extradition.

Existing law specifies the procedures for the forfeiture and exoneration of bail, including requiring a court to direct the order of forfeiture to be vacated and the bond exonerated if the defendant appears in court within 180 days of the date of forfeiture or within 180 days of the date of mailing of specified notice, if required.

Existing law requires the court to vacate the forfeiture and exonerate the bond, as specified, if the defendant is not in custody, is beyond the jurisdiction of the state, is temporarily detained and positively identified, as specified, and the prosecuting agency selects not to seek extradition after being informed of the defendant's location.

This bill would authorize a court, under the circumstance described above, to toll the 180-day period within which to vacate the forfeiture for the length of time agreed upon by the parties if the bail agent and the prosecuting ~~attorney~~ *agency* agree that additional time is needed to return the defendant to the jurisdiction of the court, *and the prosecuting agency agrees to the tolling of the 180-day period. The bill would require the moving party to give the prosecuting agency written notice at least 10 court days before a hearing held to toll the 180-day period. The bill would also make a related change.*

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 1305 of the Penal Code is amended to  
2     read:  
3     1305. (a) A court shall in open court declare forfeited the  
4     undertaking of bail or the money or property deposited as bail if,  
5     without sufficient excuse, a defendant fails to appear for any of  
6     the following:  
7         (1) Arraignment.  
8         (2) Trial.  
9         (3) Judgment.  
10     (4) Any other occasion prior to the pronouncement of judgment  
11     if the defendant's presence in court is lawfully required.  
12     (5) To surrender himself or herself in execution of the judgment  
13     after appeal.  
14     However, the court shall not have jurisdiction to declare a  
15     forfeiture and the bail shall be released of all obligations under the  
16     bond if the case is dismissed or if no complaint is filed within 15  
17     days from the date of arraignment.  
18     (b) If the amount of the bond or money or property deposited  
19     exceeds four hundred dollars (\$400), the clerk of the court shall,  
20     within 30 days of the forfeiture, mail notice of the forfeiture to the  
21     surety or the depositor of money posted instead of bail. At the  
22     same time, the court shall mail a copy of the forfeiture notice to  
23     the bail agent whose name appears on the bond. The clerk shall  
24     also execute a certificate of mailing of the forfeiture notice and  
25     shall place the certificate in the court's file. If the notice of  
26     forfeiture is required to be mailed pursuant to this section, the  
27     180-day period provided for in this section shall be extended by  
28     a period of five days to allow for the mailing.  
29     If the surety is an authorized corporate surety, and if the bond  
30     plainly displays the mailing address of the corporate surety and  
31     the bail agent, then notice of the forfeiture shall be mailed to the  
32     surety at that address and to the bail agent, and mailing alone to  
33     the surety or the bail agent shall not constitute compliance with  
34     this section.

1 The surety or depositor shall be released of all obligations under  
2 the bond if any of the following conditions apply:

3 (1) The clerk fails to mail the notice of forfeiture in accordance  
4 with this section within 30 days after the entry of the forfeiture.

5 (2) The clerk fails to mail the notice of forfeiture to the surety  
6 at the address printed on the bond.

7 (3) The clerk fails to mail a copy of the notice of forfeiture to  
8 the bail agent at the address shown on the bond.

9 (c) (1) If the defendant appears either voluntarily or in custody  
10 after surrender or arrest in court within 180 days of the date of  
11 forfeiture or within 180 days of the date of mailing of the notice  
12 if the notice is required under subdivision (b), the court shall, on  
13 its own motion at the time the defendant first appears in court on  
14 the case in which the forfeiture was entered, direct the order of  
15 forfeiture to be vacated and the bond exonerated. If the court fails  
16 to so act on its own motion, then the surety's or depositor's  
17 obligations under the bond shall be immediately vacated and the  
18 bond exonerated. An order vacating the forfeiture and exonerating  
19 the bond may be made on terms that are just and do not exceed  
20 the terms imposed in similar situations with respect to other forms  
21 of pretrial release.

22 (2) If, within the county where the case is located, the defendant  
23 is surrendered to custody by the bail or is arrested in the underlying  
24 case within the 180-day period, and is subsequently released from  
25 custody prior to an appearance in court, the court shall, on its own  
26 motion, direct the order of forfeiture to be vacated and the bond  
27 exonerated. If the court fails to so act on its own motion, then the  
28 surety's or depositor's obligations under the bond shall be  
29 immediately vacated and the bond exonerated. An order vacating  
30 the forfeiture and exonerating the bond may be made on terms that  
31 are just and do not exceed the terms imposed in similar situations  
32 with respect to other forms of pretrial release.

33 (3) If, outside the county where the case is located, the defendant  
34 is surrendered to custody by the bail or is arrested in the underlying  
35 case within the 180-day period, the court shall vacate the forfeiture  
36 and exonerate the bail.

37 (4) In lieu of exonerating the bond, the court may order the bail  
38 reinstated and the defendant released on the same bond if both of  
39 the following conditions are met:

40 (A) The bail is given prior notice of the reinstatement.

1 (B) The bail has not surrendered the defendant.

2 (d) In the case of a permanent disability, the court shall direct  
3 the order of forfeiture to be vacated and the bail or money or  
4 property deposited as bail exonerated if, within 180 days of the  
5 date of forfeiture or within 180 days of the date of mailing of the  
6 notice, if notice is required under subdivision (b), it is made  
7 apparent to the satisfaction of the court that both of the following  
8 conditions are met:

9 (1) The defendant is deceased or otherwise permanently unable  
10 to appear in the court due to illness, insanity, or detention by  
11 military or civil authorities.

12 (2) The absence of the defendant is without the connivance of  
13 the bail.

14 (e) In the case of a temporary disability, the court shall order  
15 the tolling of the 180-day period provided in this section during  
16 the period of temporary disability, provided that it appears to the  
17 satisfaction of the court that the following conditions are met:

18 (1) The defendant is temporarily disabled by reason of illness,  
19 insanity, or detention by military or civil authorities.

20 (2) Based upon the temporary disability, the defendant is unable  
21 to appear in court during the remainder of the 180-day period.

22 (3) The absence of the defendant is without the connivance of  
23 the bail.

24 The period of the tolling shall be extended for a reasonable period  
25 of time, at the discretion of the court, after the cessation of the  
26 disability to allow for the return of the defendant to the jurisdiction  
27 of the court.

28 (f) In all cases where a defendant is in custody beyond the  
29 jurisdiction of the court that ordered the bail forfeited, and the  
30 prosecuting agency elects not to seek extradition after being  
31 informed of the location of the defendant, the court shall vacate  
32 the forfeiture and exonerate the bond on terms that are just and do  
33 not exceed the terms imposed in similar situations with respect to  
34 other forms of pretrial release.

35 (g) ~~(4)~~—In all cases of forfeiture where a defendant is not in  
36 custody and is beyond the jurisdiction of the state, is temporarily  
37 detained, by the bail agent, in the presence of a local law  
38 enforcement officer of the jurisdiction in which the defendant is  
39 located, and is positively identified by that law enforcement officer  
40 as the wanted defendant in an affidavit signed under penalty of

1 perjury, and the prosecuting agency elects not to seek extradition  
2 after being informed of the location of the defendant, the court  
3 shall vacate the forfeiture and exonerate the bond on terms that  
4 are just and do not exceed the terms imposed in similar situations  
5 with respect to other forms of pretrial release.

6 ~~(2)~~

7 ~~(h)~~ In cases arising under ~~this~~ subdivision (g), if the bail agent  
8 and the prosecuting ~~attorney~~ agency agree that additional time is  
9 needed to return the defendant to the jurisdiction of the court, *and*  
10 *the prosecuting agency agrees to the tolling of the 180-day period,*  
11 the court may, on the basis of the agreement, toll the 180-day  
12 period within which to vacate the forfeiture. *The court may order*  
13 *tolling for up to the length of time agreed upon by the parties.*

14 ~~(h)~~

15 (i) As used in this section, “arrest” includes a hold placed on  
16 the defendant in the underlying case while he or she is in custody  
17 on other charges.

18 ~~(i)~~

19 (j) A motion filed in a timely manner within the 180-day period  
20 may be heard within 30 days of the expiration of the 180-day  
21 period. The court may extend the 30-day period upon a showing  
22 of good cause. The motion may be made by the surety insurer, the  
23 bail agent, the surety, or the depositor of money or property, any  
24 of whom may appear in person or through an attorney. ~~The court,~~  
25 ~~in its discretion, may require that the moving party provide 10~~  
26 ~~days prior notice to the applicable prosecuting agency, as a~~  
27 ~~condition precedent to granting the motion.~~

28 (k) *In addition to any other notice required by law, the moving*  
29 *party shall give the prosecuting agency a written notice at least*  
30 *10 court days before a hearing held pursuant to subdivision (f),*  
31 *(g), or (j), as a condition precedent to granting the motion.*

32 SEC. 2. Section 1305.4 of the Penal Code is amended to read:

33 1305.4. Notwithstanding Section 1305, the surety insurer, the  
34 bail agent, the surety, or the depositor may file a motion, based  
35 upon good cause, for an order extending the 180-day period  
36 provided in that section. The motion shall include a declaration or  
37 affidavit that states the reasons showing good cause to extend that  
38 period. The court, upon a hearing and a showing of good cause,  
39 may order the period extended to a time not exceeding 180 days  
40 from its order. A motion may be filed and calendared as provided

1 in subdivision (i) of Section 1305. *In addition to any other notice*  
2 *required by law, the moving party shall give the prosecuting agency*  
3 *a written notice at least 10 court days before a hearing held*  
4 *pursuant to this section as a condition precedent to granting the*  
5 *motion.*

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